



1 No objections were filed to these reports and recommendations. Upon review of the Judge  
2 Cooke's reports and recommendations (#53) and there being no objections filed, the court finds it  
3 appropriate to affirm the reports and recommendations (##125, 126) in their entirety.

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5 Report and recommendation (#127) to which defendant Bashor objects

6 Judge Cooke entered her report and recommendation (#127) granting in part and denying in part  
7 defendants Ted D'Amico, Michael Bashor; Joanne Williams, and Terri Jacobs' motion for summary  
8 judgment (#89) on February 6, 2008.

9 Judge Cooke recommended granting the motion as to the claims against defendants D'Amico,  
10 Williams, and Jacobs. The plaintiff has not filed objections to these recommendations. Pursuant to Local  
11 Rule IB 3-1, and upon review of Judge Cooke's report and recommendation, the court finds it  
12 appropriate to affirm Judge Cooke's recommendations (#127) as to D'Amico, Williams and Jacobs.

13 Under Local Rule IB 1-4 and 28 U.S.C. § 636(b)(1)(B), a magistrate judge shall file findings and  
14 recommendations for disposition by the district judge. The district judge "shall make a de novo  
15 determination of those portions of the report or specified proposed findings or recommendations to  
16 which objection is made [and] may accept, reject, or modify, in whole or in part, the findings or  
17 recommendations." 28 U.S.C. § 636(b)(1). Under Local Rule IB 3-2, the district judge may also receive  
18 further evidence or remand the same to the magistrate with instructions.

19 However, Judge Cooke recommended denying the motion as to defendant Bashor, finding that  
20 there are genuine issues of fact as to whether defendant Bashor intentionally prevented plaintiff from  
21 receiving treatment for his eye condition and whether this caused plaintiff's sight loss in his right eye.

22 Bashor filed objections (#132) to Judge Cooke's report and recommendation, arguing that the  
23 plaintiff failed to submit sufficient admissible evidence to establish a genuine issue of material fact.  
24 Among Bashor's arguments are that no reasonable jury could believe the plaintiff's statements, that the  
25 plaintiff's statements to his referring physician were untrustworthy because they concerned a referral and  
26 not diagnosis or treatment, and that the statements were not relevant to medical treatment and are not

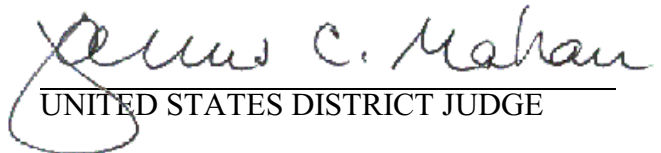
1 admissible under Fed. R. Evid. 803(4).

2 Bashor's objections are unpersuasive. Even if some of the evidence that Judge Cooke relied upon  
3 in making her report and recommendation would be inadmissible, there is sufficient evidence to  
4 establish the existence of a material fact. For example, one of the defendant's own exhibits is a release  
5 of liability form that the plaintiff alleges he signed under duress. The form, as noted by Judge Cooke,  
6 contains markings stating "U/D," which indicates that the plaintiff may have signed the form under  
7 duress. If the plaintiff signed the form under duress, then Bashor may have intentionally caused a delay  
8 in the plaintiff's treatment. This presents an issue of material fact, and defeats Bashor's argument that  
9 no reasonable jury could find in the plaintiff's favor.

10 Having reviewed all relevant documents in this matter,  
11 4IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the defendant's objections (#132)  
12 to United States Magistrate Judge Cooke's reports and recommendations (#127), be and the same hereby  
13 are, DENIED.

14 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Judge Cooke's reports and  
15 recommendations (##125, 126, 127) as to the defendants' motions for summary judgment (##88, 89, 92)  
16 are AFFIRMED in their entirety.

17 Dated this 24th day of March, 2008.

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20 UNITED STATES DISTRICT JUDGE  
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